



STATE OF WASHINGTON
OFFICE OF THE STATE HUMAN RESOURCES DIRECTOR

DIRECTOR'S REVIEW PROGRAM
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August 16, 2012

TO: Joan Zerzan

FROM: Teresa Parsons, SPHR
Director's Review Program Supervisor

SUBJECT: Joan Zerzan v. University of Washington (UW)
Director's Review Request RULE-12-001

On January 18, 2012, you filed a request for a Director's review alleging UW violated the civil service law and rules regarding performance evaluation and WAC 357-22-035 (Exhibit 1). On February 3, 2012, I requested additional clarification about your request (Exhibit 2). On March 27, 2012, I proposed timeframes for the parties to submit written briefs (Exhibit 7). Our office received your written brief on April 19, 2012 (Exhibit 10), UW's response on June 5, 2012 (Exhibit 11), and your follow-up comments on June 11, 2012 (Exhibit 12).

The Director's review has been completed based on a review of the written documents in the record, and I conclude no violations have occurred.

Nature of Alleged Violation

WAC 357-49-010(3)(b) states that an employee may request a Director's review of a performance evaluation process or procedure per WAC [357-37-080](#).

WAC 357-37-080(1) provides, in part, the following:

. . . within thirty days of receipt of a completed and signed performance evaluation . . . a WGS employee may request a director's review of alleged irregularities in the use of the approved performance evaluation form and/or procedures outlined in the civil service rules. The content of an evaluation is not subject to review.

In addition, WAC 357-49-010(4) provides, in part, the following:

. . . an employee who has been adversely affected by a violation of the civil service laws or rules may request a director's review within thirty calendar days of the date the employee could reasonably be expected to have knowledge of the

action giving rise to a law or rule violation claim or the stated effective date, whichever is later. . . .

You allege UW violated civil service law and rules with regard to the University's performance evaluation process or procedure and WAC 357-22-035 with regard to information placed in your personnel file.

Background

You indicate that you have been employed at the University of Washington Medical Center for 26 years as a registered dietician for the NICU. You state your position is a 0.7FTE, classified non-union position (Exhibit 10).

On December 6, 2011, your supervisor, Alysun Deckertt, sent an email to you and the other employees in your work unit informing you that she planned to do performance evaluations over the following two weeks because they were "due by the end of the year." As an attachment, Ms. Deckertt provided "a sign up sheet with potential days and times" to meet. She also attached a self-appraisal form and noted that she put "copies of the peer evals" in your boxes along with a due date to return the peer evaluations to her. She provided the peer evaluations for you and your co-workers to "evaluate each other." In addition, Ms. Deckertt asked each of you to provide three names of colleagues outside of your department that you wanted her to contact as part of the evaluation process (Exhibits 10-a and 11-a).

On December 19, 2011, you signed a Job Description, Annual Performance Evaluation & Competency Assessments form (Exhibit 6-b). You also received an Informal Action Plan, dated December 12, 2012, which you stated you were "made aware of" on December 21, 2012 (Exhibits 6-a and 10).

Summary of Ms. Zerzan's Allegations

You assert you were denied due process due to irregularities in the performance evaluation process. Specifically, you state that your supervisor at the time had not been supervising your position for the entire year, that the information included in your performance evaluation was incomplete and did not include positive peer evaluations and letters of recognition, and that your evaluation included the weighted use of "an HR matter" (Exhibit 11-b). Further, you assert "the performance evaluation was conducted under 'rushed' circumstances" and that "no formal policy or procedure [was] in place that clarified what forms would be used and how they were to be used." You also assert that data was "improperly placed" in your evaluation and the HR Action Plan was "punitive in nature" and used "to skew a scoring system designed to create objectivity." As a result, you contend your performance was misrepresented. You further contend the content of the evaluation "stems directly from a process with many irregularities" and "the very process resulted in a document used . . . to impede the fair and effective performance of [your] duties" (Exhibits 10 and 12).

Summary of UW's Response to Alleged Violations

UW contends you have not shown a denial of due process or an irregularity affecting the content of your evaluation. UW emphasizes the content of the evaluation is not subject to review. UW asserts the University's policy and procedure does not specify a time frame

necessary for a supervisor to have been supervising an employee prior to evaluating the employee. UW indicates that you and the other employees in your work unit "were given copies of both the peer evaluation and self-appraisal forms prior to the evaluations." Further, UW asserts the form used for your evaluation "was identical to the forms used in [your] 2008, 2009 and 2010 performance evaluations . . ." As a result, UW contends a policy or procedure existed within your department and that you had notice of the forms used in your evaluation pursuant to University policy. For these reasons, UW contends you have "not shown an irregularity under Title 357 WAC that amounts to a denial of due process or which affected the content of [your] evaluation" (Exhibit 11).

Director's Determination and Rationale

WAC 357-37-015 provides that "[e]ach employer must develop and implement an employee performance management process. Employers must develop a performance management policy that documents the key points of the process."

Both parties referenced University of Washington Administrative Policy Statement (APS) 43.14, which I printed from UW's website and included in the record (Exhibit 13).

APS 43.14(1) states "[t]he purpose of this policy is to comply with WAC 357-37-015 by establishing the key points of the University of Washington's performance management process for classified non-union staff. Therefore, there is no violation of WAC 357-37-015.

In addition, APS 43.14 includes the performance management purpose, frequency, key points in the process, and it allows units to supplement "standardized planning and evaluation forms and procedures with special performance factors and assessment approaches that are specific to organizational needs" (APS 43.14(5) Exhibit 13).

The content of APS 43.14 is consistent with WAC 357-37-020, which outlines the requirements of the employee performance management process and WAC 357-37-030, which states, in part, that employers must evaluate performance on an annual basis. Further, WAC 357-37-045 allows employers the option to "supplement the standardized planning and evaluation forms and procedures with special performance factors and assessment approaches that are specific to organizational needs."

On December 6, 2011, your supervisor sent an email to you and the other employees in your work unit informing you that evaluations would be taking place over the next two weeks. She also provided each of you with a self-appraisal form and peer evaluation forms to evaluate each other. She also asked for names of individuals outside of the department who could provide feedback on your performance (Exhibits 10-a and 11-a). This supports your knowledge of and participation in the performance evaluation process. In addition, you acknowledged you were "familiar with the evaluation and peer evaluation forms" (Exhibit 12).

Your evaluation was conducted on December 19, 2011. The Job Description, Annual Performance Evaluation & Competency Assessment form includes performance standards and competency assessments, which are rated on a numerical scale. The form notes, in part, that all performance standards with a particular numerical rating "will automatically transfer to the Performance Development Plan at the end of this Evaluation" (Exhibit 6-b, page 1). Due to specific ratings in certain categories, the comments on your evaluation note, in part, "f/u with

informal action plan . . ." (Exhibit 6-b, page 2). Though the HR Action Plan is dated December 12, 2011, you indicated that you met with your supervisor on December 21, 2011 (two days after your evaluation) to discuss the action plan (Exhibit 10). This is consistent with the instructions on the form.

As part of your Director's review request, you also allege UW violated WAC 357-22-035, which states the following:

An employee must be provided a copy of all adverse material placed in the personnel file at the time the material is included in the file. Upon the employee's request, the employee must be provided with a copy of any information in the employee's personnel file. Copies will be provided in accordance with the employer's personnel records policy as required by WAC [357-22-015](#).

Specifically, in your written comments "[a]ddressing procedural abuse . . ." you reference the HR action plan in item number 3. You state, in part, [a]t the time of the evaluation, I was unaware of the existence of this form." Further, "[t]he HR action plan was the outcome of a process with its own irregularities" and that "the basis . . . [was] unclear" (Exhibit 12, page 2).

The HR Action Plan, however, resulted from specific ratings on the evaluation form, as noted by the instructions and comments (Exhibits 6-a and 6-b). Therefore, it was part of the evaluation process as a whole, which was discussed with you on December 19 and 21, 2011. Therefore, there is no evidence a violation of WAC 357-22-035 occurred.

With regard to the specific content of your performance evaluation, WAC 357-37-080(1) states, in part, **"[t]he content of an evaluation is not subject to review."** (Emphasis added).

Therefore, based on the documents in the record, there is no evidence UW violated rules regarding performance evaluation as outlined in Chapter 357-37 WAC or WAC 357-22-035.

Appeal Rights

WAC 357-49-018 provides that either party may appeal the results of the Director's review to the Personnel Resources Board (board) by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC.

WAC 357-52-015 states that an appeal must be received in writing at the office of the board within thirty (30) calendar days after service of the Director's determination. The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located at 521 Capitol Way South, Olympia, Washington. The main telephone number is (360) 664-0388, and the fax number is (360) 586-4694.

If no further action is taken, the Director's determination becomes final.

c: Robert Kosin, AAG
Connie Goff, OSHRD

Enclosure: List of Exhibits

JOAN ZERZAN v. UW
RULE-12-001

List of Exhibits

1. Request for Director's Review Form received January 18, 2012
2. February 3, 2012 letter from Teresa Parsons, Director's Review Supervisor, requesting clarification of request
3. February 13, 2012 response from Alex Higgins, Attorney, clarifying Ms. Zerzan's employment status
4. February 17, 2012 email from Karen Wilcox, Director's Review Coordinator asking for action letter from HR
5. February 24, 2012 email from Karen Wilcox, Director's Review Coordinator asking for action letter and any other documents from Mr. Higgins
6. February 24, 2012 email from Alex Higgins attaching requested documents:
 - a. Informal action plan
 - b. Annual performance evaluation
7. March 27, 2012 letter from Teresa Parsons setting review procedure
8. March 29, 2012 email from Karen Wilcox, Director's Review Coordinator setting process due dates
9. April 2, 2012 letter from Alex Higgins withdrawing from case
10. April 19, 2012 written brief from Ms. Zerzan
 - a. Copy of December 6, 2011 email from Alysun Deckertt, Supervisor
11. May 31, 2012 written brief from Rob Kosin, AAG, University of Washington
 - a. Copy of December 6, 2011 email from Alysun Deckertt, Supervisor
 - b. Joan Zerzan's rebuttal to performance evaluation
12. June 11, 2012 final written response from Ms. Zerzan
13. University of Washington Administrative Policy Statement (APS) 43.14